IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

DATED 25.02.2005

THE HON'BLE MR.JUSTICE P.K.MISRA

W.P.No.3527 of 1998
and
W.P.M.P.No.5272 of 1998

M/s Chennai Bottling Company Ltd.,
rep. by Chief Executive
Mr. Dinesh T. Sutharia ... Petitioner

-vs-

1. The Presiding Officer,
I Additional LabourCourt
Chennai.

2. Mr.A.Nagesh ...Respondents

...

Prayer: The writ petition is filed under Article 226 of the Constitution of India for the issue of writ of Certiorari calling for the records of the 1st respondent herein in I.D.No.763 of 1990 on its file and quash the order dated 23.9.1997.

For petitioner :Mr.AR.L.Sundaresan

For 2nd Respondent :Mr.V.V.Krishnamoorthy,
for Mr.K.Mani

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O R D E R

Heard the learned counsels appearing for the parties.

2. The present writ petition has been filed by the Management of Chennai Bottling Company Ltd., challenging the award passed by the Presiding Officer, I Addl. Labour Court directing reinstatement of the present Respondent No.2 with backwages.

3. I.D.No.763 of 1990 was filed by the present second respondent before the Labour Court under Section 2A(2) of the

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Industrial Disputes Act. It was claimed that the present petitioner has been producing soft drinks on the basis of the Franchise given by Coca Cola. The claimant before the Labour Court was working as a part of the Inspecting Staff since 1982 and was receiving Rs.13/- per day as his basic wages. It was alleged by him that on 31.3.1990, the Management had called him and asked him not to attend to the work with effect from 2.4.1990. It was further indicated that the Management was in the habit discharging temporary workers every two months and taking them into service again and during the past 8 years, 140 workmen had not been confirmed. The claimant had written letters on 5.4.1990 and 7.4.1990 requesting the Management to take him back, but no reply was received. The matter was raised before the Conciliation Officer and a failure report was submitted. Thereafter the Industrial Dispute was raised.

In the counter filed by the Management it was indicated that the company was producing drinks like Limca, Gold Spot, Coco Cola, for which there was demand only in some seasons and as per the requirement, management was recruiting temporary workers and the present Respondent No.2 was one of such temporary workers recruited for seasonal work, who was removed from service as there was no requirement at that time. It was stated that there were few permanent workers, but many temporary workers like Respondent No.2 were engaged as per the requirement.

In the course of the Industrial Dispute, on behalf of the present Respondent No.2, he himself was examined as W.W.1 and documents Exs.W-1 to W-4 were marked. On behalf of the Management one Ramasubramaniam was examined as M.W.1 and documents Exs.M-1 and M-2 were marked.

The Labour Court after referring to oral and documentary evidence on record, came to the conclusion that the workman had worked for more than 240 days during the period between 1987 and 1990 and since there was no justification for termination, directed for reinstatement with backwages. The aforesaid order is being challenged by the Management in the present writ petition.

4. Learned counsel appearing for the petitioner has vehemently submitted that the Labour Court had erroneously relied upon a decision of the Supreme Court reported in 1985(2)LLJ 539 to come to a conclusion that Sundays and other holidays should be counted as actual working days, even though the claimant has not so claimed in his petition. It is submitted that the aforesaid decision is applicable only when the person is paid on monthly wages, including for holidays and Sundays and no applicability when the person gets daily wages and does not get paid during any holiday or Sunday. He has therefore submitted that the conclusion of the Labour Court that the workmen had worked for more than 240 days is based on erroneous interpretation of the decision of the Supreme Court.

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5. Apart from referring to the aforesaid decision, the Labour Court had also laid emphasis on the fact that the management had not produced the records for the relevant years. The Labour Court has referred to the evidence of the workman himself and the documents produced by the workman. In addition to the evidence, the Labour Court had also drawn adverse inference on account of the fact that relevant documents had not been produced by the Management. Therefore, even without applying the ratio of the decision of the Supreme Court, the conclusion of the Labour Court is to the effect that the workman had worked for more than 240 days.

6. No reason had been given by the Management for non-production of the relevant documents. It was not the case of the Management that no such documents were maintained. The Labour Court had given specific direction for production of the documents and yet the Management had chosen to produce the documents for earlier years, but documents for the relevant years had been with held. This conduct coupled with the evidence of the workman himself, which was supported by some documentary evidence, is sufficient to uphold the conclusion of the Labour Court. Moreover, the conclusion reached by the Labour Court is essentially a conclusion of fact based on discussion of some evidence on record. The High Court while deciding writ petition under Article 226 of the Constitution of India, does not sit as an appellate authority over such decision. Therefore, I am not inclined to interfere with the award passed by the Labour Court.

7. The learned counsel for the petitioner has submitted that even assuming that retrenchment was not proper, since presently there is no industry, instead of directing reinstatement with backwages, the Labour Court should have directed payment of compensation.

8. In course of hearing, the learned counsel for the second respondent had admitted that the building where the bottling work was going on has been now sold to M/s Chennai Ford Company and the manufacturing unit has been reshifted to Neman.

9. Keeping in view the subsequent event and keeping in view the submissions made by counsel for both parties, interest of justice would be served by directing that in addition to the sum of Rs.35,000/- which is still in deposit before the Labour Court, a further sum of Rs.85,000/- would be paid as compensation to the second respondent. The second respondent shall be permitted to withdraw Rs.35,000/- along with accrued interest immediately. The petitioner is directed to pay the further sum of Rs.85,000/-, within a period of six weeks from the date of receipt of a copy of this order.

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10. The writ petition is disposed of accordingly. No costs. Consequently, W.P.M.P.No.5272 of 1998 is closed.

dpk/rpa

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

TO

The Presiding Officer,
I Additional LabourCourt
Chennai.

+ 1 cc to Mr.AR.L.Sundaresan, Advocate SR No.9218

+ 1 cc to Mr.K.Mani, Advocate SR No.8893

W.P.No.3527 of 1998

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